

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GERALD D. SMITH,)	
)	
Petitioner,)	8:17CV278
)	
v.)	
)	
FRED BRITTEN,)	MEMORANDUM AND ORDER
)	
Respondent.)	
_____)	

The progression order in this case is consistent with [Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts](#). In part, it provides:

Copies of the answer, the designation, and Respondent's brief must be served on Petitioner at the time they are filed with the court except that Respondent is only required to provide Petitioner with a copy of the specific pages of the designated record that are cited in Respondent's brief. In the event that the designation of state court records is deemed insufficient by Petitioner, Petitioner may file a motion with the court requesting additional documents. Such motion must set forth the documents requested and the reasons the documents are relevant to the cognizable claims.

(Filing no. [6 at CM/ECF p. 4.](#))

Out of an abundance of caution, and while recognizing that Petitioner has failed to explain why the additional documents he seeks are relevant to the claims found cognizable by me as required by the progression order,¹ I will order the Clerk to provide him free of charge with copies of the three documents he seeks.

¹ Petitioner does not dispute that he has been served with the Answer, the Index, Respondent's Brief and copies of the designated records cited by Respondent. Petitioner is under the mistaken impression that Rule 5 requires that Respondent provide him with copies of everything in the Index. It does not. *See, e.g., Rodriguez v. Florida Dep't of Corr.*, 748 F.3d 1073, 1075 & nn.1-2 (11th Cir. 2014) (requiring documents *referred* to in the State's answer be provided the Petitioner and stating that the rule adopted by the court did not go so far as to "require service of the entire record filed with the District Court regardless of whether every document in the record is referenced in the answer.").

IT IS ORDERED that:

1. The Clerk shall copy and provide, at no cost, Petitioner with the following three documents: (a) Petition for Further Review (filing no. [8-6 at CM/ECF pp. 1-5](#)); (b) Petitioner's pro se motion for "Emergence Investigation" (filing no. [8-8 at CM/ECF pp. 94-98](#)); and (c) Motion for New Trial filed by counsel (filing no. [8-8 CM/ECF pp. 108-109](#)).
2. The Motion for Respondent to Produce Documents (filing no. [18](#)) is granted in part and denied in part as provided herein.
3. The Petitioner shall file his responsive brief no later than the close of business on February 5, 2018. No further extensions of time will be granted.
4. The Respondent may file a reply brief no later than March 5, 2018. In the event that Respondent elects not to file a reply brief, counsel should inform the court by filing a notice stating that counsel will not file a reply brief and that the merits of the petition are therefore fully submitted for decision.

DATED this 4th day of January, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge